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**7. Master and Servant (§ 296\*)—Injuries to Servant—Contributory Negligence—Instructions.**—A charge that where an employee has two ways of performing an act in the course of his employment, one safe and the other dangerous, he owes a positive duty to his employer to use the safe method, and any departure from the path of safety will prevent a recovery if he is injured, and if decedent could have gone to either the north or south side of the tracks, and there be safe from the passing trains, or on the track upon which a freight train had passed before the passing on the other track of the train which killed him, and did not do so, but remained upon the track upon which he was killed, which was a dangerous position from any trains passing upon such track, they must find for defendant, was properly modified by inserting in the last line between the word "track" and the word "they" the words "and that a reasonably prudent person, under the facts and circumstances of the case, would and should have done so."

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1188; Dec. Dig. § 296.\* 9 Va.-W. Va. Enc. Dig. 714.]

Error from Law and Equity Court of City of Richmond.

Action by George Ghee's administratrix against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

*H. Taylor, Jr.*, for plaintiff in error.

*Bibb & Bibb*, for defendant in error.

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HOUFF & HOLLER *v.* GERMAN AMERICAN INS. CO.

Jan. 13, 1910.

[66 S. E. 831.]

**1. Insurance (§ 335\*)—Iron-Safe Clause—Compliance.**—Under an iron-safe clause requiring the keeping of a complete itemized inventory, the insurer has a right to such a compliance with its terms as will inform him fairly as to the stock carried by the insured, and, in case of loss, as to the stock burned and the fair cash value thereof.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.\* 6 Va.-W. Va. Enc. Dig. 85; 14 id. 447.]

**2. Insurance (§ 335\*)—Iron-Safe Clause—Making Inventory.**—A summary stating merely the value of each line of goods, as shown by general footings of an itemized inventory taken by the insured but not preserved, is not a "complete itemized inventory" required by an iron-safe clause.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.\* 6 Va.-W. Va. Enc. Dig. 447.]

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

**3. Trial (§ 199\*)—Instructions—Province of Court and Jury—Deciding Questions of Law.**—A requested instruction that if the insured made an itemized statement of each line of goods in their stock, but only preserved the general footings of each line as the inventory "then this inventory, is not a complete itemized inventory provided for in the policy," was given with a modification making the quoted clause read "then this inventory is a matter for the jury to consider whether or not a complete itemized inventory." Held erroneous, as leaving a question of law to the jury.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 467-470; Dec. Dig. § 199.\* 14 Va.-W. Va. Enc. Dig. 565; 7 id. 708.]

**4. Insurance (§ 335\*)—Iron-Safe Clause—Keeping Books.**—Insured, a mercantile firm, who kept invoices showing all purchases, but kept no record of daily sales, except credit sales, deposited in a bank all moneys collected from accounts and cash sales, but their bank book did not discriminate between deposits made by the firm and those made by one of them in his individual capacity. Held, that such book was not a substantial compliance with an iron-safe clause requiring the insured to keep a set of books which shall clearly present a complete record of sales for cash or credit.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.\* 6 Va.-W. Va. Enc. Dig. 85; 14 id. 447.]

**5. Trial (§ 199\*)—Instructions—Province of Court and Jury—Reciting Questions of Law.**—A requested instruction that if the insured firm deposited in a bank all the money collected from accounts and cash sales, and also deposited along with such sums to their credit in the same account moneys collected by one of the firm from his separate business, "then said bank book does not constitute a book stating clearly and plainly a complete record of all sales both for cash and credit, as provided for in the policy," was given with the modification making the quoted clause read "it is for the consideration of the jury whether said bank book does constitute a book showing clearly and plainly a complete record of all sales both for cash and credit." Held erroneous, as leaving a question of law to the decision of the jury.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 467-470; Dec. Dig. § 199.\* 14 Va.-W. Va. Enc. Dig. 565; 7 id. 708.]

Error to Circuit Court, Augusta County.

Action by Houff & Holler against the German American Insurance Company. From a judgment for defendant, plaintiffs bring error. Affirmed.

*Curry & Curry* and *R. S. Kerr*, for plaintiffs in error.

*Hanckel & Hanckel*, *A. C. Gordon*, and *Jos. A. Glasgow*, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.